UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 14 CR 243 (JSR)
Sentence

CHARLIE SHREM,

Defendant.

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New York, N.Y.
December 19, 2014
2:30 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
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MARC A. AGNIFILO

ALSO PRESENT: Gary L. Alford, IRS

(Case called)

MR. TURNER: Good afternoon, your Honor. Serrin Turner, for the government. With me at counsel table is Special Agent Gary Alford from the Internal Revenue Service.

MR. AGNIFILO: Good afternoon, your Honor. Marc Agnifilo, and with me is Charlie Shrem. Good afternoon, your Honor.

THE COURT: Good afternoon. We're here for sentence. The first order of business is to calculate the Sentencing Guidelines, which the probation office calculates as a total offense level of 25 and a criminal history category of I, which, if we were only looking at the guidelines, would lead to a suggested prison term of 57 to 71 months. However, there is a statutory maximum of 60 months, so the guideline range is 57 to 60 months. Any disagreement with that?

MR. TURNER: No, your Honor.

MR. AGNIFILO: No, your Honor.

THE COURT: Very good. Now, of course, what that shows, among other things, is what this Court has frequently had occasion to respectfully suggest, which is that the guidelines are arbitrary, irrational, and at times downright silly. For example, in this very case, the guidelines would recommend a sentence even greater than Congress has given as the maximum sentence. This is bizarre.

I'm required to give consideration to the guidelines, I have done so, and find them not worthy of consideration. I'm very happy now to hear from both sides as to what the sentence should be. I hope that no one will be so foolish as to refer to the guidelines.

Go ahead, Mr. Agnifilo.

MR. AGNIFILO: Thank you, your Honor.

Charlie Shrem sits before you, a 25-year-old man. He committed this offense when he was 22 years old, and I've struggled to put into the right words what, if any, significance that has, and not only the age, the number of the age, but the sophistication, the worldliness, the experience level of the person who committed this crime, and I think it's very important. It's impossible to pinpoint, to identify, to specify exactly when it is that someone grows up, and that's a shame.

For Charlie Shrem and I think probably for most people that time comes when you realize you are responsible for someone else, and I think that realization comes to each of us in an absolutely individualized, unique way. I think it's come to Charlie Shrem. I think it's come to Charlie Shrem largely in a business context. I think it's come to Charlie Shrem while he was an antimoney coordinator for a company called BitInstant that he founded with another founder, and it certainly came to him a little too late in the game for him, unfortunately, which is why we're sitting here discussing these sorts of nonlegal concepts at his sentencing.

He started BitInstant when he was 21, and he had a series of e-mail communications with someone who was known to him as BTCKing, now known to all of us as Mr. Faiella, when he was 22. And what ends up being the best evidence in the government's case and, quite frankly, overwhelming evidence of Mr. Shrem's knowledge that Mr. Faiella, known to him as BTCKing, was involved in trying to sell bitcoins to people who would want to buy drugs on the Silk Road, all starts really with a -- and I don't know that I'd say this in every courtroom, but I can say it here, and I hope I say the word correctly -- puerile, boyish, stupid, intemperate, foolish, exchange, where they're pointing at each other. You can hear it, and this is one of the reasons e-mails are so terrible, one, because they last forever, and, B, because I think people act inconsistent with their true nature and say things more directly than they might say if you actually were looking at someone's face. And what they basically are doing to each other is Faiella is saying, well, you're stealing, if you don't let these transactions go through, you're stealing my clients' money. And Shrem says, oh, yeah, you're selling drugs on the illegal Silk Road.

Now, when I got this case about maybe ten months ago, you don't know where the case is going to go, I looked at the e-mails, I said, Charlie, you have to plead guilty. I mean, there's not a lot here. There are all these wonderful subtleties in the case, and there might be some really interesting arguments and, Lord knows, we couldn't have a better judge than Judge Rakoff for interesting, weighty arguments, I said, but you've done everyone in a sense a favor by taking a razor-sharp spotlight and going through all the fog and making it as clear as a bell you know for the rest of time that Faiella's selling bitcoins on the Silk Road, the illegal Silk Road; I think he even underlines it, and that's the heart and soul of this case.

Now, what does it mean? It means a few things. It means for Charlie Shrem that he's having this puerile argument while he's the antimoney-laundering coordinator, and that's why he committed a crime. I mean, at that very moment, having this discussion, and then having the transactions consummated was undoubtedly a crime, and one that he pled guilty to. But how could this be? Why would this happen? And this case has presented a very unusual opportunity, I think, to your Honor in a proceeding that we all know what we're referring to. Charlie Shrem is a young man. He's growing, he's learning things. His life is changing. He's trying to figure out where in the world he fits in. He's trying to figure out where in his own family he fits in. He's trying to figure out where in his religion that he grew up with he fits in.

Again, none of this is to say that he didn't know he was doing wrong. He knew he was doing wrong. But there's something that is missing in the equation, which is life experience. Knowing is the first step. Knowing is the seed of something that we plant in the ground. We know the law when we graduate law school, but we wouldn't try a racketeering case after we pass the bar because we would make 500 mistakes during the case. And so why don't we make 500 mistakes? I don't know that we get new information. I don't know that we know specific things, but we know somehow how to move through the world. We know the problems and we know the problems because of all the times I think, and I'm speaking mostly of myself as a lawyer, all the times we screwed up, all the times we made mistakes and all the lessons we've learned, and that's how we get better and that's how we grow. It's information.

And he did know better, he should have known better. He should have stopped it dead in its tracks. He didn't, because they were getting a decent amount of money from Faiella. I think over the course of 11 months they profited almost $15,000, which is, I think, significant enough to BitInstant for where they were as a start-up that he stayed in this. But all of this is being done, these are the decisions of a 22-year-old, not to say they're not wrong, not to say that somehow they escape the prism of moral judgment, they have all of those things, but in terms of blameworthiness, I think that's all significant.

So what was Shrem doing? Shrem was essentially helping someone who was helping someone buy illegal drugs or what's most likely, most overwhelmingly likely illegal drugs.

Now, there are a couple of things that are significant. It's significant, though I suggest certainly not dispositive, that if they're on a side, they're on the side of someone who is buying drugs. The law recognizes a distinction, I submit, historically, federal systems, state systems, between people who sell drugs and people who buy them. I mean, Faiella is probably the biggest customer he had. But even there, he had a number of customers who were buying personal use quantities, probably personal use quantities of some type of illegal drug most likely.

Silk Road, I don't know what the percentage is and I'm certainly not going to spar with AUSA Turner on this, I don't know if it's 80 percent, 90 percent, it's mostly a drug site and so whether it's 100 percent or something less is, I guess, neither here nor there. This is most likely what was going to be happening. It could have been marijuana, it could have been cocaine, it could have been heroin, it could have been hash. I don't know what it was, because nothing's actually happened. But at the end of the day I think it's significant that Mr. Shrem is aligned, with a few intermediate steps, with someone who is buying drugs, not someone who is selling drugs. He's not laundering money of a drug seller. I think that while this statute and certainly the money-laundering statute as well would be applicable to someone who is laundering drug proceeds, I submit to your Honor that is an activity of a different nature than what we have here. It's a different nature because I think of the evils that drug selling has presented, the desperation with which I think our country and other countries have tried to prevent the laundering of those drug proceeds, and I think it's worth noting here that Section 1960, the statute that Mr. Shrem pled guilty to, I believe was passed in 1992. It wasn't used a lot and it seems to have had no teeth until the Patriot Act added some provisions to it which I think are relevant here.

Now, what are we concerned about with the Patriot Act? We're concerned, I think, that people are going to send money from one place to another and that that money is going to be used, I guess, for terrorism, I mean, in a post-9/11 environment. But as your Honor knows, being one of the scholars of the RICO statute, where a statute begins doesn't necessarily bear resemblance to where it ends. There's no doubt that Mr. Shrem is comfortably within the purview of 1960, but I don't think at the end of the day that he should be sentenced in accordance with someone else's conduct who also would be within the purview of Section 1960.

The second point that we discussed in our brief, and I know your Honor's read everything and I'm not going to go through it in great detail, but I think it's a point worth highlighting in a somewhat different way, almost 50,000 customers processed orders through BitInstant, and Mr. Shrem violated his duties as the antimoney-laundering coordinator with only Mr. Faiella. I think that's very significant. I think what's also significant, and I'm not here to say bad things about Mr. Faiella, who is being sentenced at another time, but I think it's significant that Mr. Faiella continued the activity, whatever it was that he was doing, even after he and Mr. Shrem parted ways. And I think it's highly significant and goes to the heart of fashioning a fair and reasonable sentence that, after parting ways with Mr. Faiella, Mr. Shrem never did anything like this again.

In fact, what he did around the time that Faiella was moving away from him, and it's really just circumstance, I mean, and he was contacted by the Department of Homeland Security, the Department of Homeland Security sent an e-mail to the general BitInstant mailbox. Mr. Shrem answered the next day. The Department of Homeland Security had a number of questions about the role of bitcoin and how bitcoin could be used by people looking to launder money or break the law in different ways, and Mr. Shrem had a number of meetings, I think it was three, with, I think it was a total of four agents for the Department of Homeland Security. We go through this in our sentencing memo. He met with the Manhattan D.A.'s office who also had questions about bitcoin, and that's before he got arrested here. This is after the conduct, the offense conduct, and before he got arrested here, at the same time that he's never doing anything like what he did with Mr. Faiella.

Now, the prosecutor's going to point out that Faiella and Shrem parted ways for reasons unrelated to Mr. Shrem or Mr. Faiella. There were issues, I guess, with another company that caused that to happen. I think what is significant, though, is that if it were really about money for Mr. Shrem, if Mr. Shrem was looking to make money from Silk Road, there's an exchange that's in the presentence report and referred to in our sentencing memo as well where the cofounder of BitInstant at one point says to Mr. Shrem why don't we just dispose of Mr. Faiella and we could essentially advertise on the Silk Road, too, and Mr. Shrem doesn't take the cofounder at that offer. They never advertise on the Silk Road. They never move toward the Silk Road. They don't do anything with regard to the Silk Road other than their contact with BTCKing, with Mr. Faiella. And so when I say that his conduct is aberrational, I recognize that it took place over the course of, I think it's about ten or 11 months, and that's certainly true, but I don't know that that means it's not aberrational in the 3553 sense in terms of the quality of the offense conduct itself. It's not something that Mr. Shrem was looking to promote. The not something that Mr. Shrem was looking to find elsewhere. When Mr. Faiella went his own way, Mr. Shrem dropped it, never again tried to make inroads on the Silk Road, and I think that's significant. And I think it's significant that for, I think it's a period of 15 months after Mr. Shrem stops dealing with Mr. Faiella, there are no other AML violations leading up to his arrest in this case.

I want to talk just for a second about general deterrence, because the government makes a big, fairly big issue of general deterrence, and there's three things that I want to say about general deterrence. I guess I'll start with the boldest one that I want to say first. General deterrence is recognized by 3553; it's something that's in there. However, I think in order to have the concept of general deterrence administered ethically, and I'll say in a minute what I mean by ethically, I think it has to be diluted by other aspects of 3553. If Immanuel Kant was standing here, and I think Immanuel Kant is standing spiritually in every federal courtroom during sentence, he would say we can't do this. We can't use people as means to send messages to other people. We can't use Charlie Shrem as a means to send a message to some unknown person somewhere in the world so that they don't do something wrong with bitcoin or money transmission. It's not right. It violates the categorical imperative. It's something that, we shouldn't treat people as means for any particular end.

So to the extent that we can even consider general deterrence, and it's an age-old proposition, and I'm not going to sit here and say anything other than that, I think it has to be tempered by other aspects of 3553.

In preparation for today, I have had reason to look at a number of different studies. There is a very thorough study by Cambridge University that they did for the Home Office in England, and the conclusion of the study is that it's not so much the length of the sentence as much as the certainty of being caught that is really the deterrent quality.

THE COURT: I think this is more interesting, to be frank, because Immanuel Kant, huge figure though he is in the history of the world, was not, so far as I can recall, a member of Congress, and Congress has decreed that general deterrence will be taken account of, and that was hardly unique to Congress. It had been part of the Anglo-American legal philosophy for quite sometime. What is much more relevant is what do we need in terms of punishment to bring about general deterrence. The difficulty, of course, is that designing studies that can really determine this is not easy. I'm interested in the study that you're in the process of describing. I'll be interested if the government has any contrary study they want to bring to my attention. I have read, as I'm sure most of the judges in this court have read, studies that are all over the lot, and that is because there are so many parameters involved and it's so difficult to design a statistically meaningful study in this area that to some extent one has to rely on intuition and guesswork and experience because the studies do not give us a definitive answer.

On the other hand, I think it is fair to say that there are at least a great many studies that suggest that there is not a huge difference between the general deterrent effect of long prison terms as compared to shorter prison terms, even those studies being criticized by others who take a different point of view, and the study you're about to be telling me about, which I'm not personally familiar with, but I've seen other similar studies which are really a subset of that view and say that it's the likelihood of being caught. But why is the likelihood of being caught a deterrent at all? It's because of fear of prison. If you knew for a fact that if you were caught you would not do any prison time, that it was set in stone that there would be no prison time whatsoever, the fact that you might be caught would not have, one think, much of a deterrent effect. It would become just another cost of doing business, so to speak. So I think the better argument is that short prison time has as much of a general deterrent effect as long prison time, or something along those lines.

MR. AGNIFILO: I think the other thing that we have in this case that is a mighty measure of punishment is an agreed-upon forfeiture order of close to a million dollars.

THE COURT: Yes. Thank you for reminding me of that. I'm going to sign that right now, so we get that out of the way, and give it to my courtroom deputy to docket.

Go ahead.

MR. AGNIFILO: And I think the reason that that is a powerful general deterrent, especially in the bitcoin space, especially with companies like BitInstant, other bitcoin processers, is because of the way the law works. In other words, it doesn't matter that Charlie Shrem made less than $15,000. The truth is that in terms of the funds that are deemed illicit under the law, that number is close to a million dollars, so in terms of forfeiture, and until one becomes comfortable with this concept or I should say familiar with this concept, it's almost counterintuitive, how can he forfeit money that he undoubtedly didn't make.

THE COURT: Also, if you will, another counterintuitive aspect of it is that it drives the sentencing guideline calculation in this and a great many cases, which has been greatly criticized by many, many observers who would question whether sentencing is about the amount of money theoretically involved, often not received by the individual defendant, as opposed to things like what kind of human being is this.

MR. AGNIFILO: Agreed, and that's right. But I think the way that it functions here as a deterrent, the deterrent value, is when people know and people know and will know and will know more and more, that this particular crime doesn't pay, literally doesn't pay, and that they will be on the hook in a very real sense to the United States Government for whatever amount of money passes through their business that's illicit in nature and that there will be a forfeiture judgment that is collectible for, I don't know if it's 20 years or whatever the lengthy period of time, that's a mighty factor. That's not an incidental factor.

THE COURT: It's not an incidental and I query how much deterrent effect that it has. You're arguing that it has substantial deterrent effect. The sad truth is that the government often is not able to collect what on paper it is entitled to forfeit, and I think if the assumption of all of this is that word gets out, so in your argument word gets out that you could face a forfeiture considerably greater than the amount of money you realized, word may also get out that, in fact, the government frequently is unable to collect that money.

MR. AGNIFILO: I think though, with this group of people, I mean, because what happens, I think, in certain realms of certain types of offenses, the defendant doesn't make the money on paper the way I think, if Mr. Shrem is permitted to do so, he's going to be a businessman of some sort --

THE COURT: Right.

MR. AGNIFILO: -- maybe in the bitcoin realm, maybe in some other realm, I anticipate he's going to have verifiable income. I don't think he's going to be off the financial chart like in the case of some defendants who have large forfeiture orders because they're not going to have traditional jobs where they're showing identifiable paper income, whether because they go back to some sort of illegal activity if they're in the illegal drug business of certain natures, we'll never know what money they're making. I understand your Honor's point completely, but I think for people like Mr. Shrem who are looking to make their way as a normal, typical, legitimate businessman, I think the government could stand in better stead.

THE COURT: All right.

MR. AGNIFILO: In addition, I think the assumption of a federal felony, especially a felony of this nature, has dire consequences. And in essence, I think what's happening and why I keep coming back to the term "quality" of this is because in one fell swoop, Mr. Shrem goes from someone who is on a certain road in life and is able to do certain legitimate business things and, all of a sudden, he has a felony and a conviction. It makes it harder to have bank accounts. It makes it harder to do a lot of things. It makes it harder to go to certain countries. It makes it harder to rise to a certain level in business. It's essentially signing on to these grave limitations, and, yes, there is something tangible and scary and forboding about prison, which is why every lawyer who has ever stood at this podium is looking for something different undoubtedly, but ultimately, I think that the general deterrence has to be viewed alongside where Mr. Shrem is now, where he was when he committed this crime. And as your Honor famously said, and this is probably one of the few sentencing memos I didn't put this in because it's your Honor's quote, and I didn't write it down, but I think I remember it about right: If ever there was a time to look at the general good works of someone and place it alongside the misconduct, it's at sentencing.

One of the hard things for Charlie Shrem is he's a young man. I don't think we're going to be here 20 years from now. If we're here 20 years from now, he'd have 25 years as an adult to have amassed good works so that I could come here and say, your Honor, look, he not only helped the boy who lost his leg in a terrorist attack, which he did do as a high school student, he did 75 other things because of all the time he had as an adult moving through the world.

I guess what I'm about to do is I'm about to ask your Honor almost to turn your quote upside down and to trust that he's going to do these things, to sentence him for what I think he can do, to sentence him for where I think he is going.

I think what the letters all show, the letters show and what we all know about Charlie Shrem, is there is a fair amount of conflict in his life, where he comes from, where he's going; the role of bitcoin, even in that journey. But this case is so much about the journey, the movement, the moving from childhood to adulthood of this young man, and some of it's played out right here with your Honor, not only in connection with the case, but just in connection with other things about the family life that your Honor knows about. And the case is alongside all this.

I guess what I'm really asking at the end of the day, I'm asking you to trust him. I mean, I guess I'm asking you to trust him that he's on a good path. He stepped off. He stepped off and he has to be punished for stepping off, but he's on a good path generally. He's a good man. He has a good heart. Everybody loves him and they love him for a good reason. He's nice to everyone. He's generous with everyone. There is something bright about him. I've known him now for 11 months. There is a brightness about him, a positive quality from him. He's happy, he goes through tremendous turmoil and he's scared to death of this case, and still there's this wonderful life-affirming quality about him and he's going to do great things.

What I keep telling him, I say it's good this happened to you, it's good. I said you're going to be a better person.

This had to happen, it had to happen. And there are certain aspects about this case that really is God smiling on you and this had to happen because you will come out of this better, you'll come out of this being wiser beyond your years.

The crime he committed is so much a product of youthful bad, bad, bad judgment, and not appreciating the important role he had, not realizing that he had to grow up faster than he did because it was no longer about just sitting at a computer and writing computer code and dreaming of things that could make the world better. He had real responsibilities. He had tangible responsibilities and he had to live up to them, and he didn't appreciate it enough. And when he had the chance to stop Faiella, he should have. There's no question, and he didn't because it just was the mistake of a lifetime. But that's not him and that's why I think the aberrational part is the key. He's not looking to break the law. He's looking to do this the right way. He's sort of hitched his spiritual wagon to bitcoin.

I don't know much about bitcoin. You'd be shocked to know that I still know very little about bitcoin, and I don't know if it's a good thing or a bad thing, if it was going to go somewhere or not go somewhere, but I know one thing, because this is my world, if this gets too close to criminals, it's not going anywhere, it's just going to die.

In addition to Charlie Shrem, and I think this goes to general deterrence too, and I know that at least for the purposes of today's proceeding, we're in somewhat of an adversarial posture, but not generally, I think the United States Attorney's office for the Southern District has done a great service to bitcoin. I think if bitcoin succeeds it's because of Mr. Turner who has taken the legal out of these cases because of his office, because the only way that bitcoin could live up to whatever its true potential is, whatever that might be, is to get the criminals out of it, to get the criminals out of it and to vigorously, vigorously investigate and prosecute violations for the antimoney laundering statute. I think this case, this very case, is very much part of what is going to make bitcoin succeed, because if there are too many criminals involved in it, it's not going to succeed. I don't know what else about it could make it succeed or not, but I know that that will make it fail, and Charlie Shrem knows that, too.

I know I started by struggling a great deal with trying to come up with a theme that I thought was the theme in this case, and he's only a 25-year-old person, so I don't know that he gets to be a Greek tragic hero, but he hurt himself tremendously, tremendously. Because he had it made. He found a way. He has mixed feelings about his small Brooklyn neighborhood, but he was out, and he was attached to this wonderful idea and all he had to do was guard it with his life, and he didn't. The punishment for him, I think, comes in many forms. And I don't know that we need a lot more. I don't know that we need a jail sentence to send a message to Charlie Shrem that what he did is bad and wrong and illegal, and I don't know that we need a jail sentence for the world at large to tell them that either. I think the vigorous prosecution by the Southern District of New York of Mr. Shrem and others, and there are many others, and the baton has been picked up by other U.S. Attorney's offices in other districts, they're doing bitcoin cases as well, and something your Honor said, I think, comes back to the general deterrence point, which is people know, if they step off the path with bitcoin, the government's watching. This is the big leagues now, this isn't just a brilliant idea of a bunch of, and I don't mean the term in a derogatory sense, computer geeks. This is American business, and to be American business means something, or at least it should. And what it means is that you have to follow the rules, you're a grown-up. It's time to get off the computer screen, alone, and be a grown-up, and I think that message is loud and clear, and I salute the Department of Justice for making that message loud and clear. But I think it's loud and clear. I think regardless of whatever sentence your Honor gives to Mr. Shrem, I think that message is loud and clear.

In closing, and I'm obviously here to answer whatever questions your Honor might have, I've appeared before your

Honor many times, I know you've read all the materials and the letters and I don't need to go through it, there are many people who have faith in this young man, and I believe he has tremendous potential. I believe that if he's allowed to do so, he will do good things with the world. I think he wants to do good things with the world.

He wrote a letter to your Honor and there's one sentence that I read a few times, where he says he was a visionary, and I thought, huh, he's telling Judge Rakoff he's a visionary, I think you have to have guts to do great things in the world, and I think he can do that. I think he's learned. I think the message in all of this is loud and clear with him, and I'm asking your Honor to, I guess, take a chance on him a little bit. He's going to do wonderful things and he's not going to let any of us down.

Thank you.

THE COURT: All right. Thank you very much. Let me hear from the government.

MR. TURNER: Thank you, your Honor. And I will stay far away from the guidelines, I will avoid any numbers and try to stick to the adjectives. I think the adjective you used for this crime is a serious crime, and it deserves serious punishment.

The defendant was essentially facilitating drug trafficking. He was moving drug buy money. I know it doesn't look like the usual drug-trafficking case. It's on the other side of the transaction, the purchase side, and that's because of the way Silk Road worked; you had to do some special stuff with your money to actually be able to transact business on the site. So he's moving money, drug money, not the traditional way. It's online rather than on the street. These are digital drug deals, but he's moving drug money nonetheless, and I think that's what's important.

We pointed to the amount of money at issue in the case in our sentencing submission not to draw attention to the guidelines and the resulting equation, to draw attention to the amount of drug trafficking that was facilitated, because that is the social harm here, your Honor. That's what Congress's concern was with this statute. These are not just bits and bytes that the defendant's moving around on the computer. There is real social harm from the crime. There are real users often with real addictions that are now able to get addictive substances from dealers all over the world through this site, and there are drug dealers all over the world who are now able to do business this way, and the defendant is indirectly at least helping them grow their business. So in that sense, the defendant's crime was a serious one, no less so than if it had taken place in real space as opposed to cyber space.

Then we get to the point that he was just so young.

THE COURT: On the point you just made, while I do not disagree at all that it was a serious crime and I do not disagree that he was facilitating drug trafficking, the point that defense counsel is making, which you might want to respond to, was to suggest that nonetheless there is a difference between, if you will, helping drug addicts to get their fix and helping drug dealers to promote their product. The drug addicts are victims. They may have contributed to their own victimization, but they are victims nonetheless and if they are serious addicts, not all of them are, but if they're serious addicts, they will do whatever is necessary to get their drugs. And one can't help but feel in many of those cases that they should be the object of at least some sympathy.

The drug dealers, other than those few who are driven to do so by their own addiction, but I'm talking about the much more common situation that we see in this court of people who would never touch drugs in their life, they just know that they can make millions of dollars by getting others hooked on drugs, are among the most repulsive human beings that one encounters. So the argument, maybe it's too fugue, but the argument that I think your adversary was suggesting was that in assisting the drug purchasers to get their drugs, while it unquestionably contributed overall to the drug-trafficking situation, is perhaps not as morally repellant as assisting the dealers. So what about that?

MR. TURNER: Your Honor, I think the object of these laws, the money-laundering laws, is to undermine the whole system, the whole cycle of drug trafficking and drug use.

THE COURT: No, that's a different argument. That goes not to the moral quality of the misconduct. Congress has said, and has said for a long time, that we're not going to be able to stop drug trafficking unless we get to the economics of it, and that's why you have the forfeiture provisions and that's why you have all these other similar economic laws directed at drug-trafficking proceeds. We could have an interesting debate, as academics do all the time, about whether that's really worked or not. That is certainly not for this Court to second-guess. Congress has decided that this is the path they want to take, and I'm obliged to help them fulfill their mandate, but the argument, at least as I heard it, and I'm not sure what I feel about it, but that's why I wanted your input, was more directed at the moral quality of someone who enters into the facilitation of the nature that Mr. Shrem did and whether it is of a different, albeit still illegal, moral quality than someone who is knowingly assisting the drug dealers in their promotional economic activities.

MR. TURNER: Let me put it this way, your Honor, because I absolutely agree with what your Honor said, that the ultimate harm Congress is trying to prevent here is the harm to the users who are in many ways victims. But the way that the statutes are trying to do that is by going after the money, like your Honor said. Here, you have the money that's going to the drug dealers. You're trying to stop the money from getting to the drug dealers in the first place. In the typical context, you're trying to stop the drug dealers from hiding the money after they've already gotten it. Which is more morally important or which is more morally problematic if you aid that activity? It seems to me they're pretty much the same. They're all aiding the distribution, the trafficking of drugs and, at the end of the day, increasing the social harm that results from addiction and drug use in general.

I don't think there's much of a moral distinction there. I think the distinction generally has to do with the history of these laws because typically the money is aggregated at the drug dealer level and that's where you go after it. Silk Road is a little special because, like I said before, you have to do something special with the money; you have to convert it into a special form before you even transact business with a drug dealer. And here you had somebody who was aggregating that money, BTCKing, before it got to Silk Road. He was a reseller of these bitcoins, and that's why we have the case we have.

THE COURT: All right. You were about to address the larger argument, which is essentially that this was an impulsive kid and, from the Supreme Court on down, we don't treat kids the same way we treat fully formed adults.

MR. TURNER: Right, and obviously this was not a kid. This was a man, a young man, for sure, and his youth is certainly a legitimate factor for the Court to take into account, and it's first offense and that is a legitimate factor for the Court to take into account. But the Court sees a lot of young men who commit crimes and they exercise bad judgment, for sure. That's a very common thing we see. Nonetheless, here, I think there are some factors on the other side. This was the CEO of a company. This was someone who appointed himself the compliance officer of that company. And this was the vice chairman of the Bitcoin Foundation, a foundation that was established to try to repair in some ways the reputation of bitcoin, to show that it had legitimate use, to show that it could be a legitimate currency in the financial system.

He was clearly aware of the concerns the government had about the money-laundering dangers that digital currency such as bitcoin posed. That's partly why, I'm sure, he registered the business with FinCEN to start with. And by the way, just a quick digression, on the point about whether the defendant passed up the opportunity to advertise his business on Silk Road, obviously he's not going to advertise his own business on Silk Road. That would draw the attention of law enforcement directly to him rather than a reseller that was working with him. But this was someone who knew better. Regardless of his age, he knew better. And he nonetheless carried out this conduct over the course of a year. He preached know your customer to the outside world, but then when it came to regulatory compliance, he looked the other way. This is someone who had conversations with BTCKing where BTCKing is saying things like Charlie, I would rather you not know anything about anything when it comes to me. He says fine, I got your back, bro, that sort of thing. And this happens repeatedly, again and again. And he's warned. He's warned by his business partner. He's warned by his cash processer, and he keeps doing it. Obviously he didn't make mountains of money from this activity. He was struggling; it was a business that was trying to get off its feet, but obviously profit motive was the motive there.

I recognize the youth, but I think there are factors that cut the other way here so that this is not a momentary lapse of judgment by a young person. This is someone who was immersed in this business world, who was holding himself out to this business world as an example of what a bitcoin executive should be all about and then he's subverting all the things he's talking about in public when he's engaging in these private transactions within the company.

Finally, deterrence, and I'm not going delve into a debate about Immanuel Kant, I'm more of a J.S. Mill man myself, but I think clearly deterrence is a factor here. This is a closely watched case. The digital currency industry is very interested in this case, and defense counsel pointed to the certainty of being caught.

THE COURT: The real question is this. Let us assume that a court believes that some prison time is appropriate, but then after, in my hypothetical, weighing all the factors other than general deterrence, it finds that the appropriate sentence is X, then the question is should there be an increase above X for general deterrence purposes. You might not like your adversary's reference to Immanuel Kant, but the point he was making is in a way that's using human beings as a tool to accomplish some social policy, and that is, perhaps, when looked at in that light, somewhat inconsistent with other humanistic notions of justice that pervade our traditions.

But I'm putting all that aside. As a practical matter, what evidence is there that Y amount should be added to X for general deterrence. The Sentencing Commission has never provided any evidence of that. Zero. They choose their numbers for all sorts of, as I've most respectfully suggested, irrational reasons, but that's not part of what they have undertaken, which is really a serious scientific study of how much prison translates into how much general deterrence in any given situation, and in fairness to them it's probably unmeasurable. Social science is a wonderful thing, but there are limits to what it can do. Then you have to sort of resort, as most judges do for most purposes, to experience and common sense. But certainly, like any judge, it would be helpful to me to know what additional amount of prison time should be added for general deterrence purposes, if any, to the sentence that this Court would otherwise impose based on the seriousness of the crime and the immorality of its commission.

MR. TURNER: I said I was going to stay away from numbers, your Honor, and I think I'm going to stick with that. What I would say is that if a substantial term of imprisonment is not imposed, I think that would undermine the objective of a deterrent effect here. I think the dividing line between what the defendant is asking for, which is just probation, and a substantial prison sentence, that's a big one in terms of the deterrent effect that those two different options would have.

THE COURT: Yes. To take it to extremes, it's undoubtedly the case that there would be some added deterrent effect, though even then one doesn't know how much, but some added deterrent effect if one were to impose a death penalty. Congress hasn't remotely suggested that that's appropriate here and neither have you, but I just give that as an example of how difficult it is to say and how much additional deterrence is achieved, say, by ten years over five years or 20 years over ten years.

The American public is a highly moralistic group, and I think it's fair to say and I, like all Americans, can share this, that the people of this country take their morality seriously in an internalized way that is perhaps not true of every culture, but one of the, if you will, down sides of that is almost taking a certain pleasure in high sentences because it reaffirms the moral auditor. What is going through the minds of people when they read in the paper Joe Schmoe committed a serious crime, but he was sentenced to ten years, 20 years, 30 years, depends on the crime, that really says to me that what I've always believed is right has been vindicated, this is not a universe of chance and good and bad fortune. It is a universe or at least a nation of laws in which what is right and true and just will be vindicated and what is bad and wrong and evil will be punished, but that so easily can slip into failing to take account of the human being who is bearing the full brunt of that construction, that great moral development that is all being thrown at him or her. And so you have the situation where we now have 2.2 million people in prison in this country, vastly in excess of any other country in the world, and vastly in excess of where the United States stood in, say, 1950 when there were 700,000 people in prison. So I share, like all Americans, the desire to see justice vindicated, but I worry that it has to be tempered with consideration that we are all human beings and all of us share characteristics with every defendant who comes before this Court.

With all those bromides out of the way, let me hear further from you.

MR. TURNER: Your Honor, obviously there are many factors that go into sentencing and for your Honor to balance. It's not an enviable task, but nonetheless no one is talking about here imposing some sort of sentence that would not be just for the defendant just in order to send some message. I've already discussed, I think, that this crime was a serious one in and of itself. I've already discussed how the defendant knew what he was doing, he knew what he was doing was wrong. I think, though, clearly, as your Honor pointed out, an additional factor that Congress thinks is important and the courts typically think is important is the interest of deterrence, and I think the interests of deterrence are especially implicated here for a couple of reasons.

First, this is not a crime that is easily detectable. As much as defense counsel talked about now the bitcoin community knows the government is watching, it is not easy to watch for this sort of activity. Compliance typically happens behind the scenes. The government doesn't have the resources to do a lot of audits of these companies and a lot of it's going to be missed. We backed into this case the way, the investigation was done. We happened to find that not only BTCKing was committing crime, but the people he was dealing with at BitInstant were, so it's not an easy crime to detect. So when crimes like this are detected, it is important that the message goes out that they come with consequences.

Beyond that, you have the special context of the digital currency business. This is a growing area. It's an area that the federal government has serious money-laundering concerns about. Obviously, bitcoin has legitimate uses, nobody's disputing that, but it also has serious money-laundering risks. These businesses, digital currency exchange businesses, are one of the few areas where the government can get a hold on in order to impose some sort of money-laundering controls, and have a lookout through which to spot suspicious activity. And unless those businesses get the message that these laws are not a joke, they're not a suggestion, but they're laws that you must comply with or else they come with consequences, then I think this Court will miss a valuable opportunity to help promote the legitimacy of that industry.

I think a sentence like probation, that will be viewed as a slap on the wrist. I think something like forfeiture, that will be viewed as a slap on the wrist. I think there needs to be a substantial prison sentence here. What that sentence should be, I defer to your Honor. But I think it needs to be a substantial prison sentence as opposed to the collateral consequences.

THE COURT: I'm interested, and I agree with you that forfeiture in some ways would be viewed as a slap on the wrist, which makes you wonder why the federal government insists on just bringing certain kinds of cases against companies as opposed to individuals, but that's a different debate.

Anything else you wanted to say?

MR. TURNER: I think that's it, your Honor, unless you have further questions.

THE COURT: All right.

MR. TURNER: Thank you.

THE COURT: Let me hear from Mr. Shrem if he wishes to.

THE DEFENDANT: I screwed up really bad, your Honor. My attorney and Mr. Turner were correct in saying that I was given a responsibility and I failed myself and my community, my family and the bitcoin community as a whole. You know, you see the movie Spiderman when you are younger and one of the only quotes that you kind of remember from that is with great power comes great responsibility, and I always would watch that and said what does that mean, when you have great power, where does that come from. And I guess the answer is that when you're in --

THE COURT: I think it comes from Marvel Comics, if I remember correctly.

THE DEFENDANT: When you're in a powerful position, when you're in a position of power, it's a lot harder to stay responsible to yourself and stay morally responsible. It's a lot easier when there's nothing riding on you. And I failed that. I was very young. I was 22, and Mr. Turner pointed out that I was the CEO and I was the compliance officer. I was actually the only employee of the company at the time; it was just me and my partner running this out of our basement. And the actions stopped before I founded the Bitcoin Foundation and before I worked with Homeland Security and the D.A.'s office. I knew what I was doing was wrong and given the opportunity it stopped, and it was over two or three years ago, to a point where the company grew, 25 people, and we had a great company and doing great things. And eventually FinCEN came out with regulations and we looked at ourselves and we said the area's so gray, we should stop, and we actually shut down the company almost a year before I was arrested.

And so I screwed up really bad and I realized that a long time ago, and I tried really hard and suffered greatly to wrong those rights and to work with the government, teaching them how to actually take down these bad guys, working with them out of my own will, wanting to help, after I had already stopped doing the negative things because I knew what kind of negative things were actually going on. And I wanted to help anyone. They would come to my office, I'd go to their office, in addition to various subpoenas that we got, out of my own will, and I felt really bad for what I did. And I went and I started the Bitcoin Foundation and we grew that, and the foundation is working with companies to be much better compliant, and I tried really hard and we instituted tons of policies to make sure that no other customers can do this, and I have no excuses for what I did.

I broke the law and I broke it badly, and I'm really sorry for doing that, and I'm sorry for failing you and failing this country, but I cherish so much and I want to change the world and I'm trying to. From the letters that you've read, I help people get jobs, all my former employees, I would go out and find them jobs and I would do charitable things since I was a kid. I want to be that person that is remembered for even doing one little thing to change the world, and the way I grew up, in my head, the way my brain operates is that I think ten steps ahead and I say I want to be there. And along the way I make mistakes and I don't think about how my actions affect other people. While I'm going through, I'm just kind of a snowplow, plowing through.

When I was arrested, I was a very immature kid. I was. And I've suffered greatly from this. I've lost the respect of many people in the community, my community and the bitcoin community. I've been under house arrest for a year and suffered various psychological effects. I've, I have very severed relationships with family and friends all because of this. It's all my fault. I screwed up, and the bitcoin community, trust me, they are scared. They saw what happened to a guy like me that was on top of the world and got arrested at the airport. No one is doing this anymore. There is no money laundering going on in the bitcoin space. They're terrified. There are Senate hearings. All of the bitcoin community is working so closely. I helped the New York State department of financial services to create what's now known as the bit license that they're coming out with to allow bitcoin companies to be regulated. I sat in the office of Cory Jacobs and Dana Syracuse and with a whiteboard explained to them how bitcoin works. Years ago, when maybe ten people in the world knew what bitcoin was.

Because my lawyer, my attorney is right, bitcoin needs to stay away from criminals, bitcoin needs to stay away from people and actions that I did. Bitcoin needs to stay away from that and I need to be out there making sure that it doesn't go back to that because bitcoin is my baby. Bitcoin is what I love and all I have. It's my whole life. It's what I'm on this earth to do, is to help the world see a financial system that does not discriminate and provide for corruption, and I think that bitcoin will do to money what e-mail did to the postal service. It allowed everyone to be equal. People in Africa, the Middle East, Asia, will have the same opportunities now with bitcoin, and because of this now, because you can move money instantly and information on a peer-to-peer system. And I think that's really important. And if your Honor grants me that, I'd love to be back out there helping the world and making sure people don't do stupid things like I did. I'm sorry again.

THE COURT: Thank you very much. It is almost a platitude for any judge to say that the most difficult thing that he or she does is impose sentence, but that is certainly true in this as in so many other cases. This Court has never taken refuge in the easy way out of simply applying the guidelines, because I am convinced, and this case is a classic example of how totally arbitrary and irrational the guidelines system is. The guidelines system takes no meaningful account of the human being. The guidelines system really takes no account of anything except the need to apply numbers chosen out of whim to an arithmetic grid and make that the substitute for justice. I mention that only because it means that if you look beyond the guidelines, as I hope every judge will do, you are then left with the classic but no less forbidding job of trying to figure out on the merits what is the right sentence for someone, a fellow human being, who has nevertheless committed a serious, antisocial crime.

We are fortunate, other judges and me, that we have some general guidance in Section 3553 of Title 18 of the criminal code, a statute that, unlike the guidelines, has the good sense to express Congress's general policies that all judges must, therefore, faithfully carry out, but not to try to calibrate how those policies can be worked out in the multifaceted circumstances of any given case. What that section says, among other things, is that the sentence must be sufficient to fulfill the various functions that Congress has assigned to sentencing, including general deterrence, specific deterrence, reflecting the seriousness of the crime and the social harm it imposes, but also that it should be no more than necessary to carry out those functions.

So how does one determine what is necessary? The guide here, as it has been for judges in the common law system for literally centuries, has to be experience. It can't be abstractions. It cannot place ideology or sociology above just the minutiae of the facts, the nitty-gritty of what has occurred and what experience suggests is the prognosis for the future. On the one hand, this means that the guideline range and the suggested sentence by probation of 57 months, which was simply the bottom of the guidelines, would be absurd. But, on the other hand, probation would not even begin to fulfill the functions mandated upon this Court by Section 3553.

It's hard not to have sympathy in many ways for Mr. Shrem, a highly intelligent person. He has, as even his few words a few minutes ago indicated, the arrogance of youth that has both positive and negative qualities. It inspires idealism; it disregards the need to be cognizant of society's strictures. I'm not sure that it's a good philosophy for anyone of the age of 25 or so to undertake to save the world, something quite a bit more modest might be more appropriate. But the point I'm trying to make is that there's no doubt in my mind that Mr. Shrem was a very immature person at the time he committed this crime. Counsel used the word "puerile," which at least shows that he has good training in Latin, but I think the more common word is immature, immature and impulsive, but not to the point that can be excused.

This was not some kid making a one-time mistake, some act truly aberrational, taken in a moment of impulsivity or just plain stupid. There's no question that Mr. Shrem, over a period of many months, was knowingly, willfully and to some extent excitedly, even passionately, involved in activity that he knew that, in part, was a serious violation of the law and that was promoting the evil business of trafficking in drugs. And it's hard to escape on the evidence in this case a feeling that that was part of the immense excitement he felt from being one of the originators of bitcoin. It went with the territory, at least in an emotional sense. And this was true even though there are so many things about Mr. Shrem that are laudable, that are reflected in the very fine letters that the Court has received, and there are deeper aspects which I don't feel competent to get into or make part of my sentencing consideration, but his very equivocal relationship with his family and background that made him both want to be part of it and to get out of it, not an unheard-of situation for a young person, but one that in this case was carried to extremes. He had a confidence expressed even here today in his ability to think ten steps ahead, and certainly as someone who, like most folks, can barely think one step ahead, I admire his brain power, but it also betokened a lack of respect for those less confident, less brilliant, but perhaps more law-abiding than he was.

I don't want to dwell further though on Mr. Shrem other than to say that no sentence imposed by this Court should be of such length that it really destroys the man or fails to take account of his positive qualities.

Moving to some of the other factors under Section 3553, I think the government is quite right that, first, this was a serious crime and that it, regardless of whether it was addressed to the buyer or the seller or to only certain aspects of the economic activity of drug distribution, nevertheless clearly was contributing to drug trafficking overall, and the very innovativeness made it a danger to the ever-continuing battle to control drug trafficking; and, secondly, that the very innovativeness of the situation has to be taken account of from a deterrence standpoint. Every case has to be treated on its own facts, and the fact that this is a case where the Court's sentence will be communicated to others in the milieu in which Mr. Shrem was operating cannot be ignored.

Putting all those factors, as well as all the other facts under Section 3553(a), which the Court has considered, into the equation, the Court thinks that the appropriate sentence is two years. Accordingly, the defendant will be sentenced to two years in prison, 24 months. That is to be followed by three years of supervised release on terms that I'll get to in a minute.

No fine will be imposed because of the very substantial forfeiture that has already been agreed to, although there is a $100 mandatory assessment that must be paid.

Now, the terms of supervised release will include the mandatory conditions that the defendant shall not commit any other federal, state, or local crime; that the defendant shall not illegally possess a controlled substance; that the defendant shall not possess a firearm or destructive device; that the defendant shall cooperate in the collection of DNA; and that the defendant shall submit to one drug test within 15 days of his placement on supervised release, to be followed by two drug tests thereafter, as directed by the probation officer.

There will also be imposed the standard conditions one through 13. They will appear on the face of the judgment and will be gone over with the defendant by the probation officer when he reports for the beginning of his period of supervised release.

Finally, there are the special conditions: First, that the defendant is to report to the nearest probation office within 72 hours of his release from custody; and, second, that he will be supervised by the district of his residence.

Now, before I advise the defendant of his right of appeal, and we also need to talk about whether he should be remanded or we should release him pending surrender, and if so on what date, let me find out if there is anything else regarding the sentence that the Court has just imposed that either party needs to raise.

MR. TURNER: Forgive me, your Honor, if you already covered this. I know you asked at the beginning whether the parties had any objection to the guidelines calculation in the PSR, but I'm not sure I heard your Honor ask if either party had any factual objection to anything in the PSR.

THE COURT: To the facts set forth in the presentence report?

MR. TURNER: Yes.

THE COURT: I don't usually do that because in a case like this where I've received very detailed submissions from both parties setting forth the facts in much more detail than the probation officer usually has, I'm aware if there were any disagreements and then I ask about those specifically. I didn't see any disagreements. There were huge disagreements on the significance of the facts, but I didn't see any disagreement on the facts. Did you see any?

MR. TURNER: No, your Honor.

MR. AGNIFILO: Nor did I.

THE COURT: Very good. Let's talk then about surrender. What's the government's position?

MR. TURNER: I'd be fine with 90 days, your Honor.

THE COURT: All right. Very good. I assume that's agreeable to the defense.

MR. AGNIFILO: Yes. Yes, your Honor.

THE COURT: It December 19, so that would be approximately the middle of March. There are Jewish holidays around then. Does anyone know whether we need to take those into account?

MR. AGNIFILO: Our only request would be that it be a Monday.

THE COURT: Okay. Why don't we say Monday, March 16, at 2 p.m.

MR. AGNIFILO: That's fine, your Honor.

THE COURT: At the designated institution.

MR. AGNIFILO: Would your Honor be comfortable suggesting Otisville?

THE COURT: Sorry?

MR. AGNIFILO: Would your Honor be comfortable recommending that the Bureau of Prisons consider Otisville?

THE COURT: Yes, I'm perfectly happy to recommend that. As I'm sure you've told your client, these days those recommendations are oft not followed because of prison overcrowding, but I'm certainly happy to recommend it.

Mr. Shrem, you have a right to appeal the sentence. Do you understand that?

THE DEFENDANT: I do, your Honor.

THE COURT: If you can't afford counsel for any such appeal, the Court will provide one for you free of charge. Do you understand that?

THE DEFENDANT: I do, your Honor.

THE COURT: Very good.

MR. TURNER: Your Honor, the original indictment, the charges should be dismissed.

THE COURT: Oh, yes. Thank you very much. That's granted.

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